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IN THE SUPREME COURT OF THE STATE OF IDAHO

STATE OF IDAHO,)	
)	NO. 43064
Plaintiff-Respondent,)	
)	Blaine County Case No.
v.)	CR-2014-1711
)	
SCOTTY L. HOERSTER,)	
)	RESPONDENT'S BRIEF
Defendant-Appellant.)	
_____)	

Issue

Has Hoerster failed to establish that the district court abused its discretion by imposing a unified sentence of six years, with four years fixed, upon the jury's verdict finding him guilty of aiding and abetting robbery?

Hoerster Has Failed To Establish That The District Court Abused Its Sentencing Discretion

A jury found Hoerster guilty of aiding and abetting robbery and the district court imposed a unified sentence of six years, with four years fixed. (R., pp.191, 250-55.)

Hoerster filed a notice of appeal timely from the judgment of conviction. (R., pp.273-75.)

Hoerster asserts his sentence is excessive in light of his substance abuse, his claim that his codefendant was the person who actually grabbed the victim's wallet during the robbery, and because Hoerster committed the instant offense while absconded from parole in Utah. (Appellant's brief, pp.2-5.) The record supports the sentence imposed.

The length of a sentence is reviewed under an abuse of discretion standard considering the defendant's entire sentence. State v. Oliver, 144 Idaho 722, 726, 170 P.3d 387, 391 (2007) (citing State v. Strand, 137 Idaho 457, 460, 50 P.3d 472, 475 (2002); State v. Huffman, 144 Idaho 201, 159 P.3d 838 (2007)). It is presumed that the fixed portion of the sentence will be the defendant's probable term of confinement. Id. (citing State v. Trevino, 132 Idaho 888, 980 P.2d 552 (1999)). Where a sentence is within statutory limits, the appellant bears the burden of demonstrating that it is a clear abuse of discretion. State v. Baker, 136 Idaho 576, 577, 38 P.3d 614, 615 (2001) (citing State v. Lundquist, 134 Idaho 831, 11 P.3d 27 (2000)). To carry this burden the appellant must show that the sentence is excessive under any reasonable view of the facts. Baker, 136 Idaho at 577, 38 P.3d at 615. A sentence is reasonable, however, if it appears necessary to achieve the primary objective of protecting society or any of the related sentencing goals of deterrence, rehabilitation or retribution. Id.

The penalty for aiding and abetting robbery is not less than five years, up to life in prison. I.C. §§ 18-204, 18-6503. The district court imposed a unified sentence of six years, with four years fixed, which falls well within the statutory guidelines. (R., pp.250-

55.) At sentencing, the district court set forth in detail its reasons for imposing Hoerster's sentence. (2/23/15 Tr., p.425, L.19 – p.431, L.19.) The state submits that Hoerster has failed to establish an abuse of discretion, for reasons more fully set forth in the attached excerpt of the sentencing hearing transcript, which the state adopts as its argument on appeal. (Appendix A.)

Conclusion

The state respectfully requests this Court to affirm Hoerster's conviction and sentence.

DATED this 15th day of January, 2016.

/s/
LORI A. FLEMING
Deputy Attorney General

VICTORIA RUTLEDGE
Paralegal

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I have this 15th day of January, 2016, served a true and correct copy of the attached RESPONDENT'S BRIEF by emailing an electronic copy to:

JUSTIN M. CURTIS
DEPUTY STATE APPELLATE PUBLIC DEFENDER

at the following email address: briefs@sapd.state.id.us.

/s/
LORI A. FLEMING
Deputy Attorney General

APPENDIX A

1 anything. They may; they may not.

2 This Court should sentence the defendant for
3 what he did here and not for any potential parole sentence
4 that may occur in Utah. We just don't know, and there's no
5 guarantees at all. So I think it would be a mistake to
6 factor that into the Court's sentence.

7 But, potentially, he has 15 years, zero to 15
8 years, from that 2004 date. And so he served almost 5 full
9 years, so he would have 10 plus.

10 THE COURT: He could have 10 left.

11 MR. FREDBACK: Yeah, he could.

12 THE COURT: He could have zero left. And
13 that's a real big question in cases like this.

14 Well, Mr. Hoerster, you have a great attorney
15 and he's made some very good remarks on your behalf. I
16 don't know if you appreciate that or not, but he's raised
17 some really good points.

18 THE DEFENDANT: I do appreciate it, Your Honor.

19 THE COURT: You have put yourself in a
20 position, as Mr. Roark says, in front of somebody that
21 could -- I could send [sic] you to life. I could give you
22 fixed life. I could send you to prison for the rest of
23 your life right now. And you put yourself -- you put your
24 neck on the block and give a person like me the authority
25 to end your life in prison. Fixed life, that's what you

1 could get today.

2 And it's a combination of things. I think you
3 know that what you've done, and you've done it before --
4 Mr. Roark is right, it's not the same thing -- or it's --
5 it's the same thing you've done before, two very similar
6 prior convictions in Utah, theft from a person, one of them
7 is very similar.

8 I think you're right, drugs and alcohol, you
9 make horrible choices. I think you're the first one that
10 says that when I drink I make really bad choices. You're
11 the one that's going to have to decide what happens there.

12 I -- you do horribly on Probation and Parole.
13 I mean, there's just no other word to describe it. When
14 you're on Probation and Parole, you simply do miserably.
15 You don't follow through with what you're required to, you
16 take off, you -- so, I mean, frankly, I'm not sure Utah is
17 going to have a lot of sympathy for your position.

18 In commenting on what Mr. Roark said, I don't
19 believe Mr. Maama, either. I didn't believe him. I don't
20 think the jury believed him. And I think probably during
21 the course of the trial what got you convicted was that the
22 doctor was very believable and his testimony stood up, and
23 I think the jury looked at it and said, that's probably
24 good, he's right, that's what happened. I don't think
25 Mr. Maama told the truth at all.

1 When you get in a situation like that as a
2 sentencing judge and the State is making a recommendation,
3 because he did what he at least said he would do, he
4 testified, I don't think he testified truthfully, I think
5 from the very beginning he said I didn't have anything to
6 do with this, I was just kind of there, I got caught up and
7 it was a bad -- it was peer pressure, I think was his term,
8 I don't buy that for a second and I don't think the jury
9 did, either.

10 But it's difficult for me to say, when he gets
11 here, I didn't believe you, you testified, but you've
12 certainly -- all you're trying to do is save yourself and
13 I'm going to give you a longer prison term, that doesn't
14 give the State -- the next guy much incentive to make a
15 deal with the State if the judge ignores it and sentences
16 him anyway.

17 So he got what he got. Was it fair? He got
18 off easy. And he got off easy because he turned and
19 pointed at you.

20 Are there differences in what you did and what
21 he did? Yes. To me, I think the evidence is pretty clear
22 that the one who grabbed the doctor around the neck and had
23 ahold of him was you. Whose idea was it? At least the
24 indication in the testimony was that it was yours.

25 Is there a difference in the record? You've

1 done this twice before, one of them almost identical.

2 As Mr. Fredback says, this was a planned crime.
3 There was a discussion, let's do this to this guy. He's
4 got some money, let's take it.

5 One of -- and there are very few mitigating
6 factors here. One of them is that there was -- it was no
7 deadly weapon, no -- if anybody had a knife -- and there
8 was some comment about I'm going to stab him -- I mean, I
9 think Mr. Maama was the one who took the wallet, I don't
10 think there's any question about that, but there's a lot
11 more to a robbery than just the guy who reaches in his
12 pants and takes the wallet. I think, like I said, you were
13 the one being violent with him, and I don't think you would
14 hesitate for a second to use violence.

15 But he didn't get stabbed; he didn't get
16 knifed; he didn't lose an eye; nobody threw him on the
17 ground and kicked him in the head. And it may have gotten
18 that far if the policeman wasn't there. There was no gun.
19 That at least differentiates this from a robbery in which
20 there's a gun pointed at somebody's face or they get a
21 severe beating or they suffer severe personal injuries.
22 That didn't happen. I consider that.

23 What happens in Utah, I don't know.

24 How long has he been in here? Credit for time
25 served, when was he arrested? The date of the offense?

1 MR. ROARK: The morning of the offense, Your
2 Honor.
3 THE COURT: The 23rd of July. So he gets
4 credit from the 23rd of July, 2014, to today.
5 Do you agree, Mr. Fredback?
6 MR. FREDBACK: Yes.
7 THE COURT: Is it necessary to send you to
8 prison for eight years? No. Even if I -- even if I didn't
9 know what Utah would do, this isn't an 8-year offense. It
10 would be more than that, like I said, if there was harm to
11 the victim. Is it a serious crime? Absolutely. Robbery
12 is at the top of the scale. Robbery, rape -- it's a
13 serious crime.
14 You've got two priors along the same lines. So
15 is there anything other than prison called for here? No,
16 not with your record. How much time? Mr. Roark is right,
17 how much time is appropriate?
18 Are you ever going to learn? You haven't so
19 far. I'm not sure -- I can tell you, Mr. Hoerster, if you
20 ever get back in front of a judge with something like this,
21 he's likely to say good-bye.
22 THE DEFENDANT: I will, Your Honor.
23 THE COURT: No, no, I'm just telling you that
24 if you ever get back in front of a judge on a serious
25 crime, he's likely to send you to prison for the rest of

1 your life. And if you don't think that's going to happen,
2 you don't have a very good idea of how the criminal justice
3 system works.

4 Not knowing what Utah is going to do is huge,
5 and my impression is that Utah will give you more time of
6 some kind. Whether it's simply we're giving you all ten
7 years left on your sentence, I don't know. Whether they'll
8 give you credit for time you've served here in Idaho, I
9 don't know.

10 My impression is that when you're on parole and
11 you flee and you commit another crime in another state,
12 they are not -- parole commissions don't look kindly on
13 that. On the other hand, they take into account budgets.
14 They take into account a lot of other things when they
15 figure out what they want to do, and they have the power to
16 do anything from A to Z. So what they will do is
17 guesswork.

18 But I am sentencing you with some impression or
19 some thought that Utah will give you more time, that Utah
20 will not just call it good if you have 10 years left on
21 parole in Utah. And when you absconded, I don't -- my
22 impression is that Utah will not just look at this sentence
23 and say, good enough, we'll call it good, we'll put you
24 back on parole. They might. They might commute the
25 sentence. They could do anything in-between. But I'm

1 sentencing you with what I feel is an appropriate sentence
2 here and leaving the rest to Utah.

3 I am going to impose a sentence of four years
4 fixed, two years indeterminate, for a six-year unified
5 sentence. I would give you more time if I thought Utah
6 would not. How much more, I don't know.

7 I think I've given you the reasons why it's not
8 more severe than it is. You could be in prison here for
9 six years and then do ten more in Utah. I don't know. A
10 lot of that is up to you.

11 I think that covers the crime here. I think
12 that that's appropriate retribution and punishment for what
13 you did here in the State of Idaho.

14 And I am considering what Mr. Maama got,
15 although not much. Mr. Maama is extraordinarily lucky he's
16 not facing a similar or longer sentence. And you can have
17 your own views on that, and I don't blame you if you do,
18 but I'm punishing you -- or I'm sentencing you for what you
19 did.

20 I have to impose court costs by law. You will
21 be required to provide a DNA sample and a thumbprint.

22 You have a right to appeal within 42 days from
23 the judgment of the Court from the date of the clerk's file
24 stamp on the judgment.

25 Is there anything else for me to take up?